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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/992,721	11/14/2001	Laurent P. Daynes	004-5639	5890

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EXAMINER

LE, UYEN T

ART UNIT PAPER NUMBER

2171

6

DATE MAILED: 05/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/992,721

Applicant(s)

DAYNES, LAURENT P.

Examiner

Uyen T. Le

Art Unit

2171

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-26 and 29-32 is/are allowed.
- 6) ☐ Claim(s) 27 and 28 is/are rejected.
- 7) ☐ Claim(s) 33,34 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Applicant's amendment to claim 27 is acknowledged. However, newly added claim 33 is a clear indication that the claimed lock manager of amended claim 27 is not yet implemented on computer readable medium. Therefore, claim 27 is directed to non-statutory subject matter because the lock manager as claimed is interpreted as software alone. Note also that the claimed "executable in a transaction processing environment" merely describes the capability of that software but no function can be performed unless the software is implemented in a tangible medium readable by a computer.
2. Applicant's explanation of lock value is acknowledged. Consequently, rejection to claims 11-8, 32 under 35 U.S.C. 112, second paragraph is withdrawn.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 27, 28 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claimed lock manager broadly interpreted is software alone, not implemented on any computer readable medium capable of realizing the software functionality in a computer system.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225

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USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 27, 28, 33, 34 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 25, 26, 31, 32 of copending Application No. 09/992,720. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 27, 28, 33, 34 of the present Application anticipate claims 25, 26, 31, 32 of copending Application.

5. Claims 12, 13, 22, 29, 32 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 18, 22, 27, 30 of copending Application No. 09/992,720. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 12, 13, 22, 29, 32 of the present Application essentially recite the same limitations of claims 18, 22, 27, 30 of copending Application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Allowable Subject Matter

6. Claims 33, 34 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of

the base claim and any intervening claims and to overcome the provisional double patenting discussed above.

7. Claims 1-26, 29-32 are allowed.

The following is a statement of reasons for the indication of allowable subject matter: the prior art of record does not disclose or make obvious scanning an encoding of shared lock states and implementing bulk delegation of locks in the manner recited in claims 1, 9, 22, 29, 32.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Uyen T. Le whose telephone number is 703-305-4134. The examiner can normally be reached on M-F 7:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Safet Metjahic can be reached on 703-308-1436. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

9. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

30 April 2004



**UYEN LE
PRIMARY EXAMINER**